IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6510 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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GB COMPANY

Versus

COMMISSIONER OF INCOME TAX

Appearance:

1. Special Civil Application No. 6510 of 2002
MR RAJESH K SAVJANI for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1,3
MR BB NAIK for Respondent No. 2
NOTICE SERVED BY DS for Respondent No. 4

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 27/08/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

Rule. Service of rule is waived by learned advocate Shri M.R. Bhatt for respondents Nos. 1 and 3 and by learned advocate Shri B.B. Naik for respondent No. 2. Nobody appears for respondent No. 4 though served and though it was specifically stated in order dated 7.8.2002 that this petition would be finally decided on 27.8.2002.

2. The circumstances in which this petition has been filed, in a nutshell, are as under :

3. M/s. Sonali Enterprise is a benami of the petitioner-company and Shri Kaushal D. Jhaveri is a proprietor of M/s. Sonali Enterprise. M/s. Sonali Enterprise had to recover a sum of Rs. 1,57,71,782/from respondent No. 4. By letter dated 24.6.2000, respondent No. 3 had directed respondent No. 4 not to make payment of the said amount to M/s. Sonali Enterprise. In the circumstances, respondent No. 4 had refused to part with the said amount in favour of M/s. Sonali Enterprise. Shri Kaushal Jhaveri, proprietor of M/s. Sonali Enterprise thereupon filed Special Civil Application No. 8501 of 2000 challenging the validity of the order passed by respondent No. 3, the Income-tax Officer, Ward-4, Jamnagar, under sec. 281B of the Income-tax Act, 1961 dated 24.6.2000, but the said petition had been dismissed. In the circumstances, Misc. Civil Application No. 2127 of 2000 was filed by Shri Kaushal Jhaveri, proprietor of M/s. Sonali Enterprise praying that the amount, which was payable by respondent No. 4, be recovered by the income-tax authorities and be kept in a separate account so that whatever amount that might become payable by Sonali Enterprise to the revenue can be paid from the said amount. The said MCA was allowed by this Court on 17.11.2000 and a direction was given by this court that the amount, which was to be recovered by M/s. Sonali Enterprise from respondent No 4, be recovered by the revenue and be kept in a fixed deposit.

4. Only a sum of Rs. 50,00,000/- could be recovered from respondent No. 4 by the revenue and the said amount has been deposited by the revenue in fixed deposits. As M/s. Sonali Enterprise is admittedly a benami of the present petitioner, namely, M/s. G.B. Company, the revenue had appropriated a sum of Rs. 5,83,800/- from the amount which was recovered from respondent No. 4 and according to the affidavit-in-reply filed by respondent

No. 1, at present a sum of Rs. 44,89,824/- is lying with the revenue in different deposits. The said amount, as per the understanding arrived at between M/s. Sonali Enterprise and the revenue, is to be appropriated towards the dues of M/s. Sonali Enterprise.

5. Learned advocate Shri Savjani appearing for the petitioner has submitted that as M/s. Sonali Enterprise is a benami of the petitioner, the amount, which is to be paid by the petitioner and by other 10 persons to the revenue, who are named in Para 3 in an application submitted to the Commissioner of Income-tax, Central II, Ahmedabad, dated 6.6.2002, be appropriated.

6. The prayer made in this application is that out of the amount recovered from respondent No. 4, namely, Shree Digvijay Cement Co. Ltd., the amount of tax liability of the petitioner and other 10 persons referred to hereinabove be appropriated.

7. Learned advocate Shri M.R. Bhatt appearing for respondents Nos. 1 and 3 has given details with regard to the amount, which was recovered from respondent No. 4, Shree Digvijay Co. Ltd., and the amount which has been deposited by way of fixed deposits. The details have been given in Annexure I to the affidavit-in-reply filed by respondent No. 1. Upon perusal of the said statement, it is clear that a sum of Rs. 44,89,824/- is still lying with the revenue after appropriation of a sum of Rs. 5,83,800/- towards the liability of the petitioner.

8. In view of concession given by learned advocate Shri Savjani in pursuance of application dated 6.6.2002 referred to hereinabove, the said amount lying with the revenue in different fixed deposits is permitted to be encashed prematurely and the said amount be appropriated towards dues of 10 persons named in letter dated 6.6.2002. It has been submitted by learned advocate Shri Savjani that the said arrangement has been made in pursuance of the fact that all 11 parties, including the petitioner, have approached the Settlement Commission and they have agreed before the Settlement Commission that from the amount recovered from Shree Digvijay Cement Co. Ltd., respondent No. 4, the liability of the said parties towards the revenue be appropriated.

9. In view of the above facts, respondents Nos. 1 and 3 are permitted to get the fixed deposits encashed prematurely and appropriate the amount, which the 10 persons named in para 3 of letter dated 6.6.2002 owe to

the revenue, towards their liability.

10. In view of the permission given to the revenue to appropriate the amount of fixed deposits, the petition is disposed of as allowed. Rule is made absolute to the above extent with no order as to costs.

(A.R. Dave, J.)

(D.A. Mehta, J.)

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